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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,573	03/22/2001	Hector F. DeLuca	1256-00721	9707

7590

06/14/2002

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EXAMINER

JIANG, SHAOJIA A

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 06/14/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/815,573

Applicant(s)

DELUCA ET AL.

Examiner

Shaojia A. Jiang

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 May 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37-CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See attachment.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-7.

Claim(s) withdrawn from consideration: none.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


RUSSELL TRAVERS
PRIMARY EXAMINER
GROUP 1200

Advisory Action

This Office Action is a response to Applicant's amendment and response after
FINAL filed on May 24, 2002.

2. Applicant's proposed limitation of claims 1-7 to "feeding as part of a daily diet" herein presents a new issue for search and consideration by the Examiner.

5. Applicant's remarks filed May 24, 2002 with respect to the rejection of claims 1 and 4-6 made under 35 U.S.C. 102(b) as being anticipated by DeLuca et al. (4,338,312), the rejection of claims 1, 4-5 and 7 made under 35 U.S.C. 102(b) as being anticipated by DeLuca et al. (4,110,446), and the rejection of claims 2-3 made under 35 U.S.C. 103(a) as being unpatentable over DeLuca et al. (4,338,312 and 4,110,446) have been fully considered but are unpersuasive for reasons of record stated in the Final Office Action dated February 12, 2002.

Applicant again asserts that the '312 patent teaches away from administering vitamin D compounds in the daily diet of a dairy cow. However, as discussed in the Final Rejection, the scope of DeLuca's method nowhere is limited to dairy cows "in the dry period" and the Example (at col.3) in which the third lactation or better Holstein cows were fed in the dry period is merely a particular example of the method therein. Contrary to Applicant's assertion, DeLuca clearly discloses the method for prophylactically treating dairy cow for parturient paresis comprising administering the instant compounds (see claims 1 and 3). Parturient paresis (milk fever) is known to be a metabolic disease

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of dairy cows including lactating dairy cows resulting from parturition and the initial formation of milk according to DeLuca (col.1 lines 8-15).

Therefore, said claims are properly rejected under 35 U.S.C. 102(b) and under 35 U.S.C. 103(a). No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is (703) 305-1008. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie, J.D., can be reached on (703) 308-4612. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.

Shaojia A. Jiang, Ph.D.
Patent Examiner, AU 1617
June 11, 2002

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